EXTENSION OF SERVICE TO THE PRESENT CHIEF ENGINEER.

6. MR. K. P. RAMAN PILLAI: Will the Government be pleased to say whether they contemplate giving any extension of service to the present Chief Engineer?

MR. R. KRISHNA PILLAI: The question is under the consideration of Government.

SENIORITY AMONG OFFICERS.

7. MR. K. P. RAMAN PILLAI: With reference to the asterisks placed against the names of certain officers in the Civil List, will the Government be pleased to lay on the table the Government Orders referred to therein by which those officers have been placed in those particular grades?

MR. K. GEORGE: The answer is in the negative.

HIGH COURT REGULATION AMENDMENT BILL.

MR. V. SUBBA AIYAR: Sir, in introducing the Bill to amend the High Court Regulation, I beg to move that the Bill be read in Council. The Bill has, under the orders of the Dewan, been already published in the Gazette and I am not therefore moving for leave to introduce it.

MR. K. GEORGE: I second the motion.

MR. V. SUBBA AIYAR: I may now explain the principle and the main features of the Bill. The amendment of the Regulation has been taken up at the request of the High Court. The High Court have pointed out that, under Section 9 of the existing Regulation, the Judges are now in a position to inspect the subordinate courts only with the previous sanction of the Government. This entails considerable delay and it is not possible for them to inspect the subordinate courts satisfactorily. With a view to such inspection they have suggested that Section 9 of the Regulation should be so amended as to permit any of the Judges of the High Court to inspect the subordinate courts without the previous sanction of the Government. Every other head of a department inspects his subordinate offices without the previous sanction of Government. The second suggestion of the High Court is with reference to Section 12 of the Regulation. This Section enacts that a Full Bench shall consist of three Judges. This, as will be pointed out later on, leads to some inconvenience. They have therefore suggested that a Full Bench should consist of not less than three Judges, so that the Chief Justice may have power to constitute a Full Bench composed of as many Judges as he thinks fit. When the recommendation of the High Court came up, it was thought desirable to revise the Regulation as a whole, seeing that the present Regulation is now 30 years old. With that view, the Regulation was taken up and the present Bill is the result.

I may now state a few of the main features of the Bill. In the first instance, it is proposed to delete Section 3 of the Regulation, providing for the appointment of a Pandit. It is within the memory

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of all that the Pandit ceased to exist in the High Court very very long ago and I believe these Pandits were intended for the exposition of the Hindu Law, when questions relating to that law came up for decision. Such questions have now been embodied in legal decisions and translations of old texts are also available. The Government thought that it was not necessary to continue the Pandit any longer, but yet Section 3 of the Regulation makes provision for it and, seeing that it is absolutely unnecessary to have it, that has been deleted. The next important amendment is that the various Sections have been recast and the Bill divided into Parts, so that we may be able to find out very easily the provisions of any particular portion of the Regulation. And the first portion of it defines the powers of a single Judge of the High Court. While following generally the existing provisions of the Regulation, the first clause of this Section has been put in, so that a Division Bench of the High Court has now been expressly stated to possess the powers which a single Judge possesses under the provisions of the Section. In other words, although a single Judge is permitted to exercise certain powers with reference to certain matters, there is no express provision in the Regulation that the very same powers may be exercised by the Division Bench, although this may be inferred from another Section. In order to make the point clear and in conformity with the existing practice, clause 1 has been put in. In that clause additional power is proposed to be conferred on a single Judge. I regret that, owing to inadvertance, the most important provision in the Bill has not been printed in italics. I may assure the Council that this omission is not wilful, and made so as to prevent the eye of an ordinary reader from catching that particular amendment; but it is purely owing to inadvertance and I request the Council to take that assurance. In the case of a second appeal arising out of suits for money and involving merely questions of fact, a single Judge may dispose of such appeal even though that appeal may be based upon a conflicting decision of the subordinate Courts. I may explain that provision a little in detail. Under the existing Civil Procedure Code, no second appeal lies on a question of fact. If both the subordinate Courts, *viz.*, the Munsiff and the Judge, agree on a question of fact and such finding of fact is material for the decision of a case, no second appeal lies. Second appeals on a concurrent decision on questions of fact are allowed only when a question of law arises in the case; but with a view to lighten the work of the High Court it is considered desirable that a single Judge of the High Court should be empowered to dispose of second appeals arising out of cases in which there has been a conflict of opinion on a question of fact. If the Munsiff decides in one way and the appellate authority in another way on the same question of fact, appeals from such decisions are now decided by a Division Bench. A single Judge has no power to dispose of such appeals. It may in the first place be asked whether, when there is a difference of opinion on a question of fact between a Munsiff and a District Judge, it is not desirable that two Judges of the High Court should

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express their opinion upon the same fact. Now with reference to that, the answer is very simple. If, on the same question of fact, the District Judge agrees with the Munsiff, his decision is final. In other words, the High Court cannot revise such an opinion of the District Judge, so long as the District Judge agrees with the Munsiff. If the opinion of the District Judge may be final when he agrees with the Munsiff, there is no reason why, when two people disagree, a single Judge of the High Court, an appellate authority, should not say whether the District Judge or the Munsiff is right; and if he agrees with the Munsiff or the District Judge, his decision may be final. But at the same time it is open to a single Judge to refer any question to a Division Bench, if he thinks it necessary to do so in the circumstances of the case, and it is also provided that such a power of the single Judge can be exercised only in suits for money and not with reference to immovable property where a question of fact is material for the decision of the case. These two safeguards are, I think, quite ample to see that no failure of justice is caused by the decision of a single Judge. As for lightening the work of the High Court, I may say that in 1094 I find that, out of 644 special appeals 284, out of 551 in 1095 242, and out of 552 in 1096 240, were below Rs. 500 in value. Out of these not less than 60 per cent. may, I believe, be suits for money. As an instance in point, I may say that, if a Munsiff finds that a promissory note or a receipt is genuine and a District Judge is of opinion that it is false, it is enough if a single Judge of the High Court decides whether it is genuine or false. With these remarks I beg to commend that particular clause in the Bill to the Council and I hope the House will be able to support me in having the particular provision enacted.

I may now pass on to the next provision. Under the present Regulation, if in a Division Bench the members of the Bench disagree as to any particular matter, it is generally placed before a third Judge who hears the case singly and his decision is final. He must agree with either of the decisions. It may be desirable that, in some cases, instead of a single Judge hearing the case singly, he hears the case along with the Division Bench which differs in opinion, because that will enable the members of the Division Bench to consult their colleague, the third member, on any question of fact or law. They will also, in the light of the new observations, be in a position to change their view, if necessary. The single Judge may know exactly the trend of thought which one of the Judges who differs from him had. It is left to the discretion of the Chief Justice to post the case before a third Judge or before three Judges according as the importance of the case may deserve. That is one of the important provisions now made.

The next is with reference to the Full Bench. So far as Full Bench cases are concerned, the existing provision is that it shall consist of three Judges, so much so that, if the Chief Justice wants, he cannot constitute a Bench containing more than three Judges. The result is that a question of law in which an opinion has been expressed concurrently by three Judges and followed by later decisions may be easily overruled by

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[Mr. K Parameswaran Pillai.]

another Full Bench, where only two Judges agree in any particular question of law, or, in other words, the opinion of the three Judges recorded before may be overruled by the opinion of two Judges later on. That, I beg to submit, is rather undesirable. In such cases where a current of decision has to be altered, it is desirable that more Judges than three should sit and as far as possible a full Court. In order that there may not be any deadlock in the matter owing to a difference of opinion or equality of votes, it is provided that such a Full Bench shall consist of not less than three Judges and the number of Judges should be an uneven number.

Then with reference to inspection, I dare say that, in the many representations that have been made in the Popular Assembly, it has been brought to the notice of Government that the inspection that is now made by the High Court is not enough. Inspection generally takes place during the vacation when the courts are closed. At present it is not possible for the Judges to make any inspection of any court, even though there is a complaint against a particular officer, except with the previous sanction of Government. The Bill provides that any Judge of the High Court may inspect a subordinate court without the sanction of Government. It is provided in the Bill that the Chief Justice or any one of the Judges nominated by him may inspect. The object of this provision is that, since the work of the High Court is entirely in the hands of the Chief Justice, he should know which particular Judge is necessary for the current work of the High Court. It is therefore proposed to leave it to the discretion of the Chief Justice to decide who should inspect a particular court at a particular time.

There is one other provision and I do not think it is a matter of *any consequence*. Under the Civil Procedure Code, the High Court may make rules for the guidance of subordinate courts about procedure and other matters. With a view to empower the High Court to frame rules on matters not specifically provided for, it is provided that they may do so, to regulate the procedure of the subordinate courts. Such rules, of course, should not be inconsistent with the provisions of any Regulation in force in Travancore. With these observations, I beg to move that the principle of the Bill be accepted and that it may be read in Council.

MR. R. KRISHNA PILLAI: I second the motion.

MR. K. PARAMESVARAN PILLAI: Sir, while generally supporting the principle of the Bill, I wish to make an observation in regard to clause (C) of Section 7 of the Bill. This clause proposes to take away the right of the ordinary subject to have his case in certain second appeals heard by a Bench of two Judges. Before it is done, proper reasons should be shown as to why it should be done. The only object, so far as I can see, is to lighten the work of the High Court. If it is so, I would make a suggestion for the consideration of my learned

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friend the Law Member, and that is that, instead of taking away this right of the subject, it would be better to enable a single Judge to hear all second appeals in cases where on a question of fact there is a concurrent finding by two courts and decide as to whether there is any question of law or defect of procedure, so that the case may be heard by a Bench of two Judges. I make the suggestion because, under the Civil Procedure Code, as has been remarked by the learned Law Member, no second appeal is provided for in cases where on a question of fact or law two courts find concurrently. Nevertheless, several appeals are filed against such judgments and these have to be heard by a Bench of two Judges, whether there is a question of law or not. In such cases, rather than wasting the time of two Judges, an Admission Court might well be provided for. This will also have the effect of enabling the appellant to save the cost of getting the copies printed and the respondent the expense of defending the appeal. That would give considerable relief to the High Court. On the other hand, the present provision, I beg to submit, might in certain cases work hardship. The safeguard that we have got in the High Court is not only that these appeals are heard by superior officers, but they are heard always by a Bench of two Judges. There is much in a case being heard by a Division Bench, and it is unnecessary for me to dwell at length on the advantages of that system. I beg to submit that, although I am not in possession of the actual figures, the majority of appeals are against decrees in money suits of less than Rs. 500 in value. I, therefore, seriously object to this clause. But at this stage of the Bill, I do not propose to say anything more about it. With these observations, I generally support the principle of the Bill.

MR. T. K. VELU PILLAI: Sir, I rise to support the Bill. So far as the principle of the amendment is concerned, the learned Law Member has made a certain number of general statements before this Council, and, I am sure, his words ordinarily ought to be entitled to weight in a matter like this, because he is one of the shining lights of the profession in Travancore and a gentleman who has had considerable knowledge of law and has handled a very large number of cases. But with due deference to his experience and legal acumen, I have to make certain observations regarding some of the important points that are said to be embodied in this Bill.

Mr. Changanachery Paramesvaran Pillai has adverted to clause (C) of Section 7 and has pointed out that a single Judge should not decide second appeals arising from money suits of the value of Rs. 500 and less. The number of suits in our courts being very large and the amount of interest involved being very small—Rs. 500—it is not very safe to leave such cases to be decided by a single Judge. This Council has to realise first of all that Travancore is a very poor country. Cases in Travancore are very inferior, so far as money value is concerned, to cases in British India. And to my mind, there is no great difference between a money suit and a property suit in this matter. After all, property is something which could be converted into money and it is one

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of the first principles of economics that property possesses value because it could be converted into money. I am, therefore, unable to subscribe to the view that money suits should be placed in a position inferior to that of suits relating to landed property.

As to the question of one Judge deciding a case, we have to take into consideration the fact that, after all, Judges are but men. The difference between fact and law is not so insurmountable as my learned friend would make us believe. It comes within our experience in courts that very often a matter of law will on a sudden be converted into a matter of fact and a matter of fact into a matter of law. With very great deference to the learned Judges who preside over our courts, I should say that it is very easy to resolve a difficult case involving questions of law into a simple question of fact; and the tendency is to avoid a question of law, so that a judgment may be written very soon without labour. As Mr. Paramesvaran Pillai said, His Highness' subjects will be put to very great difficulty if the privilege of having second appeals in the highest Court of Justice in the land heard by two Judges is taken away.

The next Section about which I have to say a word is the one relating to references by the Chief Justice—Section 9. This Section contemplates a kind of judicial discretion being given to the Chief Justice. It is a fundamental principle that judicial discretion should be exercised only after hearing the arguments and looking up the papers. I do not understand how the Chief Justice at one glance will be able to find whether a particular case should be heard by one Judge or by three Judges. It is undesirable to decide the question in an arbitrary manner.

Regarding suits of the value of Rs. 5,000 and upwards, it is surely a beneficial provision that cases should be heard by a Full Bench. In this connection, I have to bring another fact to the notice of this Council. Money is certainly a very important thing in life; but life is more important still. I would say that, in cases of murder, particularly where sentences of death or life imprisonment are awarded, the appeals from decisions of Sessions Judges must also be heard by three Judges. The conditions in Travancore are different from the conditions in British India. In British India, the Council knows, there are several High Courts. There is a kind of decisive professional opinion current throughout the country, so that, if a Judge of the Madras High Court decides a case wrongly, it will arrest the attention of the other High Courts. Besides all this, there is also the check of the Judicial Committee of the Privy Council over all these courts. Here, there is no provision similar to it. The submission of decisions to His Highness the Maha Raja is becoming a mere matter of course.

I would bring to the notice of this Council one or two other facts connected with this Regulation.

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The object of all law is to place the Judiciary on a footing entirely independent of the Executive. I want a provision in this Regulation to the effect that no High Court Judge should ever aspire to any place in service other than that of a High Court Judge. If such eligibility is not prevented by law and if hopes are held out, the administration of justice will suffer. If, after all, in a small State like Travancore, a High Court Judge should be allowed to aspire to the post of Senior Dewan Peishkar on Rs. 1,500 or a Dewan on Rs. 2,000, he would try to bask in the sunshine of the Executive and try to win their favour, and this will go against the interests of the administration of justice, especially, Sir, when you remember that, in almost all Regulations that have been passed during the last ten years, the ordinary jurisdiction of Civil Courts is done away with by a stroke of the pen.

I would also bring to the notice of the Council that, so far as appointments in the High Court are concerned, at least 50 per cent. should be reserved for gentlemen of the Bar who command decent practice. Sir, now-a-days, we find that people who accepted a Munsiffship and began life under very unfavourable circumstances, are in 15 or 20 years able to get into the High Court above the heads of men who are far superior to them in legal acumen and ability. And, when after years of suffering as a Munsiff, a man loses all his powers and all his talent, and his life is one of gloom and disappointment, because of the hard monotonous work that he has done, after passing through the career of Sub-Judge and District Judge and after he is elevated to the High Court, he will lose his individuality and, therefore, the administration of justice will suffer. On the other hand, if good men who have knowledge, who have learning and character, besides a freshness of outlook, are selected, the administration of justice will improve in quality. These are matters which have to be looked into. The principle of the Bill is very simple. We find all manner of subjects clubbed together. These details have to be discussed in later stages of the Bill, when this House will have occasion to make the necessary modifications.

MR. G. PARAMESVARAN PILLAI: Sir, I am of opinion that the amendments sought to be introduced are generally acceptable. But I wish to take distinct exception to the provision contained in clause (C) of Section 7. I should think that it is the general sense on the non-official side, at least so far as the lawyer members are concerned, that such an amendment is in the first place objectionable and in the second place uncalled for. If my friend, the Law Member, is anxious to introduce some provision in the Bill in order that the file in the High Court may be reduced to a substantial extent, I should consider it desirable to provide an Admission Court, presided over by a single Judge, in respect of second appeals on concurrent questions of fact. An Admission Court is allowed in British India in respect of certain classes of second appeals. Even here, revision petitions, both civil and criminal, on decrees and orders which are final when passed by the Munsiffs or Magistrates, are heard in the first instance by a single

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[Rao Bahadur K. A. Krishna Aiyangar.]

Judge. Although the High Court as a rule refuse to interfere in cases involving mere questions of fact, it will be found on a perusal of the Administration Report that they have in very many cases reversed the original orders on the ground that the lower courts had taken a perverse view of the facts or that they had misinterpreted or misread documents. It is also common knowledge that very many special appeals on concurrent findings of facts are filed in the High Court. It is also not uncommon that in such cases the High Court very often interfere, if the Courts below had gone wrong in interpreting or construing documents or if there had been irregularity in the procedure adopted by the lower courts. If, however, a single Judge is given power to admit second appeals on concurrent findings of fact, such unnecessary labour might be saved. Such a provision is more desirable than the one now contemplated to be introduced. With reference to the amendments, especially with reference to the powers regarding certain matters vested in a single Judge, I should think that the provisions stand in need of larger elaboration and specification. Such details may be considered at the subsequent stages of the Bill. With these observations, I support the principle of the Bill in general.

RAO BAHADUR K. A. KRISHNA AIYANGAR: Sir, subject to a few reservations to which I shall presently refer, I am for the principle of the Blll being affirmed.

I agree with several of my friends who have already addressed the House, regarding the propriety and wisdom of enacting a provision like clause (C) of Section 7. It proposes to empower a single Judge of the High Court to decide finally all second appeals arising out of suits for money not exceeding five hundred rupees where the question which is material for the decision of the appeal is only one of fact and not of law. I am prepared to concede that, where a Judge of the High Court concurs in the finding of one of the subordinate Courts on a question of fact, the decision ought to be accepted as a fair settlement of the controversy in cases where the claim is not of a very complicated nature. Who is to determine, before the cases are boarded, whether they involve simple questions of fact or mixed questions of fact and law? A subordinate ministerial officer of the High Court prepares the cause list. Is he to determine the question? No doubt, he acts under the general control of the Chief Justice; but will it be possible, Sir, for the Chief Justice to examine these cases in detail, before the Benches are constituted?. The proposed innovation has the advantage of facilitating the progress of work. An Admission Court, if one existed, might give the necessary guidance. The circumstance that a single Judge is competent to refer such cases to a Division Bench, if they involved questions of law, is not a conclusive answer. The question requires careful examination by the Select Committee.

I approve of the proposal to authorise the High Court to arrange for the inspection of subordinate courts without the previous sanction of

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the Government. The selection of the Judge to be deputed for inspection now rests with the High Court as a body, but the Bill proposes to vest the power in the Chief Justice. The change has the advantage of ensuring administrative convenience. I am not aware, Sir, that the existing arrangement does not meet the requirements of the situation. I am absolutely confident that the discretion proposed to be vested in the Chief Justice will be exercised in the best interests of the public; but as a question of principle, I am not satisfied as to the necessity for a radical change. I am not aware, Sir, if the Bill was submitted to the High Court, for their opinion, before publication. I think it is due to that august body that a measure affecting their constitution should have been submitted to them for examination, before the proposed changes were definitely embodied in the Draft Bill. I have no doubt that the Select Committee will carefully scrutinise the provision. I generally approve of the other changes proposed. I support the motion for affirming the principle of the Bill.

MR. S. KRISHNA AIYAR: Sir, I take exception to the following clauses, *viz.*, (1) relating to a single Judge—Section 7; (2) reference by the Chief Justice in case of disagreement between the Judges—Section 9, and (3) nomination of an officer for the inspection of subordinate Courts—Section 15.

I do not propose to discuss these Sections now as we shall have another opportunity of going into the matter in all its details. With this reservation, I support the general principle of the Bill.

MR. J. JOHN NIDIRY: Sir, while accepting the principle of the Bill generally, I am sorry I cannot but oppose the provision regarding the enhancement of powers to a single Judge as provided in the Bill. The decision of the High Court is final in Travancore. In British India, there is the Privy Council to watch over the proceedings of the British Indian High Courts. It is not at all safe, therefore, to invest a single Judge with powers to give the final verdict even in money suits. Questions of law and fact are inseparable factors and cannot be easily distinguished and dealt with. Very often judges commit blunders and more often disagree in this respect. Both from the standpoint of the Judge and the litigant, it is advisable and necessary that, at least at the final stage of a case, two men should put their heads together in deciding it. The presence of a brother Judge will be a wholesome check on the idiosyncrasies of a single Judge. The litigant also who pays the court fees will have the consolation that the final decision of his case resulted after the due deliberations of at least two Judges of the highest tribunal in the land.

MR. P. K. NARAYANA PILLAI: Sir, I wish to make a few observations regarding the Bill. With respect to the disputed clause (C), of Section 7, in addition to the difficulty that has already been pointed out, namely, whether a particular question is a question of fact or a question of law, or a mixed question of law and fact, there is the further ambiguity as to what exactly is meant by a suit for money for the purposes of this amending enactment. A hypothecation suit is in one sense

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[Mr. C. P. Kochukunju Pillai.]

a suit for money. Whether the learned mover contemplates such suits as suits for money or what is the delimitation implied in the expression "suits for money" is not quite clear.

Then I come to the jurisdiction and powers of a single Judge, as contemplated in the Section under consideration. The principle underlying was pointed out to be one of lightening the work of the High Court, which, the learned mover says, he steadily keeps in view. I would point out that this appears to me to be inconsistent with respect to another portion of the Bill, where he wants two Judges, who differ in their decisions, to hear again the same case argued before them in the company of a third Judge. Why should such a repetition of hearing be provided for, if the object of the mover is to lighten the work of the court? In that particular instance, at any rate, the principle advocated by the learned mover seems to give way.

Now, I come to another aspect of the Bill where the learned mover embodies a provision for the hearing of any particular case by a Full Bench consisting of an uneven number of Judges not less than three. This indefinite numerical strength for a Full Bench has been provided for, as the mover says in the explanation supplied to the House, to prevent the unseemliness of a Bench of three Judges unsettling the ruling of another Bench of three other Judges. If the provision is to hold good in the light of the explanation, it seems to be implied that the High Court should consist of an irreducible minimum of at least five Judges. Clause 3 says that the High Court shall consist of a Chief Justice and not less than 3 Puisne Judges. So with four Judges the High Court can exist legally. An endeavour to increase the number of judges may not be quite acceptable to the tax-payer. How then to give effect to the object underlying this provision does not appear quite easy.

These difficulties strike me at present as calling for further consideration. I do not propose to discuss the Bill any further at this stage of it.

MR. C. P. KOCHUKUNJU PILLAI: Sir, I would also object to the insertion of clause (C) of Section 7. Though I am a vakil practising in the Munsiff's Court, I am aware of the nature of the decisions arrived at by the Judges in the District Court in the case of appeals coming up before them against the judgments of the lower courts in suits for money for Rs. 500 or below. Besides what has been said by my friends on this side, I have only to mention one circumstance which renders the clause objectionable. It is with reference to the practice now obtaining in hearing appeals in the lower courts. The Judges in the lower appellate courts hear these appeals after going through the judgments of the Munsiffs. By going through the judgments before hearing the appeals, they get an impression one way or the other, and in suits of Rs. 500 and below, if they write judgments with such predisposition, and if they are not to be heard by a Division Bench, it is doubtful whether

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parties will get full justice. Hence, while accepting the general principle of the Bill, I object to this clause being put in.

MR. N. RAMAKRISHNA PILLAI: Sir, while accepting the principle of the Bill, I object to the insertion of clause (C) in Section 7. In the opinion of the Law Member, this provision is made "to lighten the work of the High Court." In cases where special appeals from concurrent findings on facts are preferred, this provision will not be of much use as it does not now require any time for the High Court to dispose of this class of cases. With respect to the other kinds of special appeals allowed by the law, it is not at all just to deprive the litigant, who has paid the necessary court fees, of his right of being heard by two Judges of the High Court. The majority of money suits also do not generally require much time for disposal. I would also object to the insertion of Section 16 in the Bill as there is no necessity at all for any such provision.

MR. M. R. MADHAVA VARIAR: Sir, I shall speak a word with regard to the powers of the High Court under Section 6. According to this Section, the High Court may exercise all the powers vested in it by this and any other Regulation now in force or which may hereafter be passed and also the powers vested in the Sadr Court by Regulations not repealed. So, the High Court can exercise powers only according to certain Regulations. But the High Court sometimes exercise powers which are not sanctioned by Regulations. They say they are the inherent powers of the High Court. But these inherent powers are not at all defined. So, the High Court can exercise powers unrestrictedly. What I suggest is that the different powers of the High Court should be defined. There was a case recently of contempt of court against a newspaper at Quilon. The paper was prosecuted by the High Court for defamation. That is not contemplated by any Section of any Regulation. What I submit is that, with regard to the inherent powers of the High Court, there must be certain provisions in the Bill, and as we are consolidating the Regulation, this must be done.

MR. V. SUBBA AIYAR: Sir, I have been attacked on all sides by the members of the legal profession. They are all trying to pick holes in one Section or other, thus trying to get rid of all the important amendments of the Bill. All the same, I think I shall be able to justify my position and convince them and bring them round when we meet in the Select Committee. I only say that it is my confidence that I shall be able to convince them that I am right.

MR. T. K. VELU PILLAI: It may be the other way also.

MR. V. SUBBA AIYAR: Of course, if they try to convince me, certainly I may yield.

Now, with reference to some of the observations made by my friends, I may make a few remarks. My friends, Messrs. Changanachery K. Parameswaran Pillai, G. Parameswaran Pillai, and others suggest the necessity for an Admission Court on concurrent questions of fact. I did think over that provision, but felt that it was not

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necessary, for generally on concurrent questions of fact—and it is within the knowledge of the members of the Bar—if the Judges, after reading the judgment of the lower courts in a particular case, find that it is a concurrent question of fact, the vakil appearing for the appellant is not allowed to stand up and argue the case. They will not hear him, unless there is a question of law involved in the case so that to put up an Admission Court with a view to lighten the work of the High Court may not be of much avail. It is only when there is a question of law that the Judges of a Division Bench begin to hear the case. If there is only a question of fact, the Judges do not hear the case at all; but if my friends do think that it would be better to provide for an Admission Court, I do not think I have any serious objection.

Another objection was that it is difficult to know whether a particular case involves a question of fact or a question of law. I believe that does not in the least affect the principle of the matter, for we know that the business of boarding cases is assigned to the ministerial staff who have got sufficient experience and who can say whether the question involved is one of fact or law by reading the judgment, and in case it is wrongly boarded before a Judge, he hears the case and, if he finds that a question of law is involved, he makes an order of reference to a Division Bench. That is the practice obtaining every day in the High Court. Revision petitions may be disposed of by a single Judge of the High Court. The moment that he finds that it is a very important matter and that the case is to go before the Division Bench, he passes an order to that effect, so that I do not think there will be any difficulty whatsoever. It is not necessary that the Chief Justice should read all these judgments to see whether a case is to be posted before a single Judge or a Division Bench. The Registrar or the Deputy Registrar boards the cases properly and, if he makes a mistake, the single Judge will rectify it. Under these circumstances, I do not think there will be any inconvenience on that point.

Then, with reference to the inspection and the powers vested in the Chief Justice, I do not know whether my friend Mr. Krishna Aiyangar understood me aright when I made a few observations with respect to that matter. In the first place, it may be very inconvenient to convene a meeting of the Full Bench to know which particular Judge has to go out on inspection in regard to an urgent matter. Supposing a wire or a petition is received about the conduct or about anything else with reference to a particular officer, the head of the department or one of the Judges of the High Court has to go on inspection immediately. What is necessary is, if the suggestion is to be accepted, that he must send a notice to all the Judges of the High Court to meet after lunch at 2 O'clock and come to a conclusion as to which Judge ought to go. All that, I beg to submit, is unnecessary, as this is purely an administrative matter and not a judicial matter. For this administrative matter, I do not see why the Chief Justice should not be trusted. He

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is the head of the Judicial Department. I do not see why we should think that he will not exercise his discretion properly. Secondly, and that to my mind is a very strong ground, when the law lays down that the conduct of business in the High Court is to be regulated by the Chief Justice, if the High Court as a body decide that a Puisne Judge should go and the Chief Justice thinks that he should remain for hearing a Full Bench case to be boarded, what will be the result? The Chief Justice having the power to adjust business has no power to select a member whom he wants for a particular constitution of the Bench. I, therefore, believe that the Chief Justice should have this power. The High Court never suggested that the Chief Justice should not have the power. They said that the Section should be suitably amended, so that a Judge of the High Court might inspect a particular subordinate court without the previous sanction of Government. The reasons I have pointed out prompted me in putting in an amendment to the effect that the Chief Justice should have the power in the matter. So long as the control of business in the High Court is vested in him, it is he that should say whether he or anybody else should go on inspection.

As for the question whether a particular suit is a money suit or a property suit in which a question of title to immovable property is involved, it is purely a question of fact. If there is any doubt in the wording of the clause and it has to be amended, the point may be made more clear by the Select Committee.

It was next suggested that I am inconsistent with reference to the lightening of the work of the High Court. It has been my experience at any rate, that two Judges differing is not an ordinary matter. When the question is referred to a third Judge, the Chief Justice should read both the judgments to see whether it is such an important matter as to be placed before a Full Bench. That may occur only once in the way. There is no inconsistency.

Then about the wording that "not less than three Judges" shall constitute a Full Bench, I think the wording is perfectly clear. I have not stated that the number of Judges should be more than three. I have only stated that the number of Judges shall not be less than three. When there are more than five Judges—now we have got six Judges—if the Chief Justice has no power to place a case before a Full Bench, that anomaly has to be rectified. Therefore, it has so been cautiously worded that a Full Bench shall consist of not less than three Judges. This does not mean that there should always be more than four Judges. It is only when there are more than four Judges that the Full Bench may consist of five Judges.

Then with reference to the inherent powers referred to by Mr. Madhava Variar, I considered the question when the Bill was drafted. A Full Bench of the High Court having lately decided in a recent decision in connection with a contempt of court case that the High Court have an inherent power, it was not thought necessary to go into the question. If we begin to detail the cases in which they have inherent power, it may land us in difficulties. There are ever so many other powers which have

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[Mr. G. Paramesvaran Pillai.]

to be dealt with. It is better to leave the matter alone, until another Bench holds that the High Court has no such power. I may assure the members who expressed their views with reference to the Bill that every one of their suggestions will be considered by the Select Committee, and I believe they also know that, unless I have the support of the members on the other side, the Bill will not be passed. Therefore, there is no fear that the Bill will be passed over their heads. Every suggestion made by the members will, I repeat, receive careful consideration at the hands of the Select Committee. I dare say that some of them who have expressed their views will have no objection to sit on the Select Committee.

Mr. Subba Aiyar's motion was then put to the vote and carried.

The Secretary then read the title of the Bill.

MR. V. SUBBA AIYAR: I beg to move that the Bill be referred to a Select Committee to report in three months.

MR. K. GEORGE: I second it.

The motion was carried.

MR. V. SUBBA AIYAR: I beg to propose the names of the following gentlemen to be members of the Select Committee, *viz.*, Rao Bahadur K. A. Krishna Aiyangar, Mr. S. Krishna Iyer, Mr. P. K. Narayana Pillai, Mr. Changanachery K. Paramesvaran Pillai, Mr. Joseph Panjikaran, Rao Bahadur K. V. Rangaswami Aiyangar, Mr. C. P. Kochukunju Pillai, Mr. G. Paramesvaran Pillai, and myself.

The Council accepted the proposal, the members having agreed.

RESOLUTION *RE* KALLAR HYDRO-ELECTRIC SCHEME.

PRESIDENT: Mr. G. Paramesvaran Pillai will now move the Resolution standing in his name.

MR. G. PARAMESVARAN PILLAI: Sir, I beg to move the following Resolution:

(*a*)" That this Council recommends to Government (*a*) that, in regard to the Kallar Hydro-Electric Scheme now under the consideration of Government, no assurance should be held out to Messrs. Alfred Dickinson & Co. that they will be granted such permission, facilities and concessions as have been prayed for by them to construct and carry out the scheme until Government have had an opportunity of examining the report of any preliminary investigation that the Company may be permitted to undertake in this behalf and of ascertaining in what way and to what extent the State stood to benefit by the said project;

(*b*) That a Committee of experts be appointed to investigate the possibility of Kallar water being made use of for irrigational and other purposes in Travancore and as to how the proposed diversion of Kallar water and the generation of power in the Madura District will affect the interests of Travancore; and

(*c*) That the said Committee be directed to recommend the terms and conditions under which the investigation of the Kallar Hydro-Electric Scheme should, if at all, be entrusted to Messrs. Alfred Dickinson & Co."

Sir, my Resolution involves three parts and raises three main questions and a few subsidiary questions of importance. The first question is that no assurance should be held out to the Company that they

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